



COUNCIL MINUTES

November 2, 2009

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on November 2, 2009 at 5:45 p.m.

COUNCIL PRESENT

Mayor Scott Smith
Alex Finter
Dina Higgins
Kyle Jones
Dennis Kavanaugh
Dave Richins

COUNCIL ABSENT

Scott Somers

OFFICERS PRESENT

Christopher Brady
Debbie Spinner
Linda Crocker

Invocation by Vice Mayor Jones.

Pledge of Allegiance was led by Scout Juul Eggen of Troop 355.

Mayor Smith excused Councilmember Somers from the entire meeting.

Mayor's Welcome.

Mayor Smith welcomed everyone to the meeting. A videotaped presentation was aired that outlined meeting procedures and provided attendees with instructions relative to addressing the Council.

Awards, Recognitions and Announcements.

Solid Waste Management Director Willie Black announced that the Arizona Chapter of the Solid Waste Association named the City of Mesa as the Municipality of the Year in recognition of the City's continued leadership in the solid waste field and the promotion of recycling efforts. He invited two employees to come forward to be recognized, Residential Collections Supervisor Danny Ochoa, who was named Administrator of the Year, and Recycling and Community Outreach Supervisor Kelli Collins, who has implemented several new programs, such as the Recycling Monkey and the Girl Scout partnership. Mr. Black acknowledged the efforts of all Solid Waste Management employees.

Mayor Smith thanked Mr. Black and the Solid Waste Management Department for their service.

1. Take action on all consent agenda items.

All items listed with an asterisk (*) will be considered as a group by the City Council and will be enacted with one motion. There will be no separate discussion of these items unless a

Councilmember or citizen requests, in which event the item will be removed from the consent agenda and considered as a separate item. If a citizen wants an item removed from the consent agenda, a blue card must be completed and given to the City Clerk prior to the Council's vote on the consent agenda.

Mayor Smith announced that citizens have requested that items 5a, 5j and 6d be removed from the consent agenda.

It was moved by Councilmember Kavanaugh, seconded by Vice Mayor Jones, that the consent agenda items, with the exception of items 5a, 5j and 6d, be approved.

Mayor Smith called for the vote.

Upon tabulation of votes, it showed:

AYES –	Finter-Higgins-Jones-Kavanaugh-Richins-Smith
NAYS –	None
ABSENT –	Somers

Mayor Smith declared the motion carried unanimously by those present.

*2. Approval of minutes of previous meetings as written.

Minutes of the September 10 and the October 19 and 22, 2009 Council meetings.

3. Take action on the following liquor license applications:

*3a. Christ the King Church

This is a one day charitable event to be held on Saturday November 21, 2009 from 12:01 p.m. to 10:00 p.m. at 1551 E. Dana Avenue. **(District 4)**

*3b. The Dobson Association

This is a one day civic event to be held on Saturday November 14, 2009 from 11:00 a.m. to 4:00 p.m. at 2455 W. Laguna Azul. **(District 3)**

*3c. Knights of Columbus, All Saints Council 9485

This is a one day charitable event to be held on Saturday November 7, 2009 from 4:00 p.m. to 7:00 p.m. at 1534 N. Recker Road. **(District 5)**

*3d. Knights of Columbus, All Saints Council 9485

This is a one day charitable event to be held on Saturday December 5, 2009 from 4:00 p.m. to 7:00 p.m. at 1534 N. Recker Road. **(District 5)**

*3e. Knights of Columbus, All Saints Council 9485

This is a one day charitable event to be held on Saturday January 9, 2010 from 4:00 p.m. to 7:00 p.m. at 1534 N. Recker Road. **(District 5)**

*3f. Knights of Columbus, All Saints Council 9485

This is a one day charitable event to be held on Saturday February 6, 2010 from 4:00 p.m. to 7:00 p.m. at 1534 N. Recker Road. **(District 5)**

*3g. Knights of Columbus, All Saints Council 9485

This is a one day charitable event to be held on Saturday March 6, 2010 from 4:00 p.m. to 7:00 p.m. at 1534 N. Recker Road. **(District 5)**

4. Take action on the following contracts:

*4a. Dollar Limit Increase for Residential Refuse Containers for the Solid Waste Department **(Citywide)**.

The Purchasing Division recommends increasing the purchase order by \$78,800.00 to the original contract with Rehrig Pacific from \$675,671.71 to \$754,471.71 annually.

*4b. Purchase of Replacement Firefighting Nozzle Tips for the Fire Department **(Citywide)**.

The Purchasing Division recommends authorizing purchase from the lowest, responsible and responsive bidder, First In, Inc. at \$49,683.65.

*4c. Purchase of a Google Search Hardware and Software for the City's Intranet Site for the Information Technology Department **(Citywide)**.

The Purchasing Division recommends authorizing purchase from the State of Arizona Contract with Dell Marketing L.P. at \$40,483.20, including applicable taxes.

*4d. Purchase of Two (2) Replacement Heavy Duty Construction Grade Trucks for the Water Resources Department (Fully Funded by FY 09/10 Vehicle Replacement Fund) **(Citywide)**.

The Purchasing Division recommends awarding the contract to the lowest, responsive and responsible bidder, McCandless of Arizona at \$226,570.92, including applicable sales tax.

*4e. Purchase of One (1) SUV (Replacement) for the Police Department (Fully Funded Asset Forfeiture [RICO] Funds) **(Citywide)**.

The Purchasing Division recommends authorizing purchase from the State of Arizona contract with Midway Chevrolet at \$48,371.18, including up-fitting costs and applicable sales tax.

- *4f. Term Contract for a Pawnbroker-Secondhand Store Information Database for the Police Department (Fully Funded Pawn Transaction Fee Revenues) **(Citywide)**.

The Purchasing Division recommends awarding the contract to the highest scored proposal, LeadsOnline LLC at \$32,242.00 annually.

- *4g. Renewal of the Term Supply and Maintenance Contract for Fire Extinguishers for the Fire Department **(Citywide)**.

The Purchasing Division recommends authorizing a one-year renewal through the contract with American Fire Equipment Sales and Service Corp. at \$43,320.00, including applicable sales tax.

- *4h. Purchase of Systems Furniture for the Mesa City Court (Fully Funded Law Enforcement Capital Bonds).

The Purchasing Division recommends authorizing purchase from the State of Arizona contract with Goodmans Interior Structures at \$477,407.50, including applicable taxes.

- *4i. Ray Road and Hawes Road Improvements **(District 6)**.

Ray Road Utilities Infrastructure, City Project 07-024-001; Ray Road Street Improvements, City Project 01-205-001; Hawes Road Street Improvements, City Project 04-847-001. This project will construct one travel lane in each direction with a raised center median on both Ray Road and Hawes Road. New traffic signals, waterlines, wastewater line and storm drain infrastructure will also be constructed.

Recommend award to the low bidder, CS & W Contractors, Inc., in the amount of \$8,527,696.39 plus an additional \$852,769.64 (10% allowance for change orders) for a total award of \$9,380,466.03. This project will be funded with the adopted FY 09/10 Street, Water, and Wastewater Bond Capital Programs.

- *4j. Fraser Electric Substation Upgrade **(District 1)**.

City Project 09-022-001. The purpose of this upgrade is to increase electrical efficiency and reduce electrical losses by upgrading the substation from a 4 kilovolt (kV) to a 12 kV.

Energy Resources has been upgrading the electric system to 12kV for energy savings, reliability and system performance.

Recommend award to the low bidder ESS International Corporation in the amount of \$248,648.00 plus an additional 24,864.80 (10% allowance for change orders) for a total award of \$273,512.80. This project will be funded with the adopted FY 09/10 Electric Capital Program.

- *4k. Excess Liability Insurance.

Recommend purchase of Excess Liability Insurance from Everest National Insurance Company for \$10 million liability coverage in excess of the City's \$3 million Self-Insured Retention (SIR). The cost of this policy is \$350,200.

Recommend purchase of 2nd layer excess liability insurance from Great American Assurance Company for an additional \$25 million in liability coverage. The cost of this policy is \$233,000.

*4l. Property Insurance.

Recommend purchase of Property Insurance from Travelers Insurance with coverage of \$300 million per occurrence with a \$50,000 deductible. This includes coverage for Boiler & Machinery with \$50 million sub-limits and a \$50,000 deductible. The cost of this policy is \$255,372.

*4m. Aviation Insurance.

Recommend purchase of Airport Liability Insurance from Commerce & Industry Insurance Company (AIG) with \$0 deductible and \$50 million per occurrence coverage. The cost of this policy is \$15,443.

Recommend purchase of Aircraft Hull and Liability Insurance from Commerce & Industry Insurance Company (AIG) with \$0 deductible and \$50 million per occurrence. The cost of this policy is \$105,896.

*4n. RWCD Irrigation Pipeline on Ryan Road.

City Project 07-054-001. This project will remove approximately 0.25 miles of irrigation ditch and replace it with concrete irrigation pipe. Work will take place in the Town of Gilbert within a dirt roadway owned and maintained by the Roosevelt Water Conservation District (RWCD).

Recommend award to the low bidder, Talis Construction Corporation, in the amount of \$133,568.82 plus an additional \$13,356.88 (10% allowance for change orders) for a total award of \$146,925.70. This project will be funded with the adopted FY 09/10 Wastewater Capital Program.

*4o. Alston House Rehabilitation (**District 4**).

City Project 06-034-003. The Alston House was the residence and office for Mesa's first African-American doctor. This project includes restoration of the exterior structure to meet historical requirements, with an upgrade of the interior to ensure functionality.

The recommended total award amount for this project is \$197,854.50, which is the base bid only without a change order contingency. Since the total funding for the project is \$192,000 as shown below, a deduction change order of \$20,000 will be issued once the contract is executed to remove an allowance in the base bid for an ornamental iron fence that was put in the bid to ensure we expended all of the available funding. The net available for change orders will then be the difference between the available funding and the new contract amount, which is \$14,145.50. Funding is available in the approved FY09/10 Community Development Capital Program – CDBG Funds (\$80,000), the State Heritage Fund Grant (\$100,000), and cash donations (\$12,000).

5. Take action on the following resolutions:

- 5a. Approving the Mesa-Falcon Field Airport Master Plan and authorizing the City Manager to execute documents that are included as part of the Master Plan – Resolution 9599.
(District 5)

Paul Knauth addressed the Council regarding the Mesa-Falcon Field Master Plan. He stated that although he supports the Plan, the “Public Airport Disclosure Map” (**see Attachment 1**) is different than the map that was included in the Plan two weeks ago. Mr. Knauth noted that this map, which expands the flight patterns to 20 square miles of Mesa, must be provided to everyone who is considering purchasing property in the area. He stated the opinion that the map would negatively impact property values.

City Manager Christopher Brady stated that the map is required by the State of Arizona and was prepared in accordance with Federal Aviation Administration (FAA) guidelines.

Airport Director Corrine Nystrom said the Disclosure Map identifies the fact that residents living in the area and individuals purchasing property in the area must be made aware of the possibility that aircraft arriving at or departing from Falcon Field could fly over their property.

Mayor Smith stated that the map does not grant permission for flights in the area.

In response to a question from Vice Mayor Jones, Ms. Nystrom advised that a Task Force recently addressed neighborhood concerns regarding noise from flight school activities and safety issues, which resulted in recommendations that the flight school and other pilots could adopt on a voluntary basis.

Mayor Smith explained that although the map reflects what might occur in the area, the map is not a directive as to what will occur.

Mr. Brady added that the City is unable to dictate flight paths and can only make recommendations to minimize the impact on the neighborhoods. He said that the purpose of the map is to identify areas that could possibly be affected by aircraft flights.

Responding to a question from Councilmember Higgins, Ms. Nystrom confirmed that the noise contours remain the same. She advised that following a recent Council discussion at a Study Session, additional areas were included on the map to ensure that the notification area encompasses the appropriate areas as the airport continues to grow.

Councilmember Finter stated that having lived in the area north of University Drive between Greenfield Road and Val Vista Drive he was aware that many airplanes fly over the area. He stated the opinion that increasing the disclosure area on the map provides the public with realistic information.

Mayor Smith said that the City does not own or control the air space over the City. He stated that the City serves as an advocate for residents and businesses in making requests of the FAA regarding issues of concern. Mayor Smith noted that the Task Force that addressed these issues included residents and representatives with varied aviation interests.

In response to comments from Councilmember Higgins, Mayor Smith confirmed that the only change to the original map was filling in the corners to create a rectangular box that includes areas that will be impacted in the future as airport traffic increases.

It was moved by Vice Mayor Jones, seconded by Councilmember Higgins, that Resolution No. 9599 be adopted.

Upon tabulation of votes, it showed:

AYES –	Finter-Higgins-Jones-Kavanaugh-Richins-Smith
NAYS –	None
ABSENT –	Somers

Mayor Smith declared the motion carried unanimously by those present and Resolution No. 9599 adopted.

- *5b. Approving and authorizing the City Manager to execute an Intergovernmental Agreement between the Town of Gilbert, Maricopa County Department of Transportation and the City of Mesa for the construction, construction management, and operation and maintenance of the Power and Pecos Intersection Improvement Project. The Town of Gilbert is responsible for the maintenance of the intersection improvements and the City of Mesa is responsible only for the portion of Pecos Road that extends east from Power Road into the Mesa City Limits – Resolution 9591. **(District 6)**
- *5c. Approving and authorizing the City Manager to execute an Intergovernmental Agreement with the Arizona Department of Transportation for the construction, construction management, operation and maintenance for the arterial reconstruction on Southern Avenue, Val Vista Drive to Greenfield Road. American Recovery and Reinvestment Act funding of \$1,610,892 is available for this project – Resolution 9592. **(District 6)**
- *5d. Approving and authorizing the City Manager to execute an Intergovernmental Agreement with the Arizona Department of Transportation for the construction, construction management, operation and maintenance for the arterial overlays on Sossaman Road, US 60 to Southern Avenue; Higley Road, US 60 to Southern Avenue and Harris Drive, Southern Avenue to 8th Avenue. American Recovery and Reinvestment Act funding of \$970,728 is available for this project – Resolution 9593. **(Districts 4 and 6)**
- *5e. Approving and authorizing the City Manager to execute an Intergovernmental Agreement with the Arizona Department of Transportation for the construction, construction management, operation and maintenance for the arterial reconstruction on Higley Road, Southern Avenue to University Drive. American Recovery and Reinvestment Act funding of \$2,559,279 is available for this project – Resolution 9594. **(Districts 5 and 6)**
- *5f. Approving and authorizing the City Manager to execute an Intergovernmental Agreement with the Arizona Department of Transportation for the construction, construction management, operation and maintenance for the arterial reconstruction on Brown Road, Recker Road to Power Road; and University Drive, Val Vista Drive to Greenfield Road. American Recovery and Reinvestment Act funding of \$2,333,331 is available for this project – Resolution 9595. **(Districts 2 and 5)**

- *5g. Approving and authorizing the City Manager to execute an Intergovernmental Agreement with the Arizona Department of Transportation for the construction, construction management, operation and maintenance for the arterial reconstruction on Alma School Road, Southern Avenue to Baseline Road; and Power Road, Broadway to Baseline Road. American Recovery and Reinvestment Act funding of \$3,310,569 is available for this project – Resolution 9596. **(Districts 3 and 6)**
- *5h. Approving and authorizing the City Manager to execute an Intergovernmental Agreement with Gilbert Public Schools to secure funds in the amount of \$84,825 for one school resource officer assigned to Desert Ridge High School – Resolution 9597.
- *5i. Approving and authorizing the City Manager to execute a Grant Agreement with the Arizona Criminal Justice Commission to secure grant funds in the amount of \$118,151 for training and travel, contract services and equipment for the Police Department's DNA Backlog Reduction Program – Resolution 9598.
- 5j. Approving and authorizing the City Manager to execute a Memorandum of Understanding with the United States Immigration and Customs Enforcement (ICE) to allow holding facility detention officers and a detective assigned to the ICE Task Force to perform certain functions of an immigration officer – Resolution 9600.

Mark Egan stated that although he was an immigration attorney, he did not represent individuals in deportation or illegal immigration issues, and he was speaking to the Council as a resident of Mesa. He referred to an article titled "Fight crime, not immigration" that appeared in the November 2, 2009, issue of The Miami Herald (**see Attachment 2**), and he provided a copy for each member of the Council. Mr. Egan stated the opinion that the Mesa Police Department should address criminal activity rather than identifying illegal immigrants.

Vice Mayor Jones explained that the authority being given to the Police Department relates only to individuals who are in police custody. He advised that patrol officers would not have 287(g) authority.

Mayor Smith clarified that 287(g) training would enable detention officers to process individuals who have been arrested for criminal activity and identify those that are in the country illegally without contacting Immigration and Custom Enforcement (ICE).

Councilmember Finter stated that predator illegal individuals are responsible for many crimes against the immigrant community. He stated the opinion that this authority is a step in the right direction.

In response to comments from Mr. Egan, Mayor Smith explained that Council policy limits the use of 287(g) training to detention officers in the jail facility. He cited the example of an individual in the country illegally who is charged with Driving under the Influence (DUI). He noted that the individual is not likely to appear in court to face the charges and is likely to commit another offense in the community.

City Manager Christopher Brady referenced the section of the Memorandum of Understanding (MOU) that limits the use of 287(g) training. He explained that 287(g) training would provide officers with access to the ICE data base to determine the legal status of individuals already in custody.

Mayor Smith said that the MOU provides a balanced approach to ensure that criminal suspects in the country illegally are not released to commit additional crimes in the community.

Mr. Egan said he was reassured by this information, and he expressed the hope that future Councils would utilize the 287(g) training in the same manner.

It was moved by Councilmember Kavanaugh, seconded by Councilmember Richins, that Resolution No. 9600 be approved.

Upon tabulation of votes, it showed:

AYES – Finter-Higgins-Jones-Kavanaugh-Richins-Smith
NAYS – None
ABSENT – Somers

Mayor Smith declared the motion carried unanimously by those present and Resolution No. 9600 adopted.

6. Introduction of the following ordinances and setting November 16, 2009, as the date of the public hearing on these ordinances:

- *6a. **209-17 (District 6)** The 4800 through 5200 block of South Hawes Road. Located south of the Loop 202 Freeway on the east and west sides of the Hawes Road alignment including the southeast corner of the Hawes and Ray Road alignments (230± acres). Rezone from AG-AF to C-2 and PEP with a BIZ overlay and a Council Use Permit, and the establishment of the Gateway 202 Airpark Development Master Plan. This request will allow for the development of a high quality master planned Mixed Use Employment area with office, retail, hotel, and urban living components. Brad Hansen, 202 Holdings, owner; Stephen Earl, Earl, Curley and Lagarde P.C., applicant.

P&Z Recommendation: Approval with conditions. (Vote: 5-0-1, Boardmember Coons abstained, Boardmember Perkinson absent)

- *6b. **209-19 (District 4)** 1265 South Pima. Located west of Mesa Drive and south of Southern Avenue (2.13± acres). Rezone from C-2 to C-3 and Site Plan Review. This request will allow an existing building to be used for wholesale of plumbing and HVAC equipment. Mark Shill, owner; Tim Nielsen, applicant.

P&Z Recommendation: Approval with conditions. (Vote: 5-0-1, Boardmember Coons abstained and Boardmember Perkinson absent)

- *6c. **209-21 (District 6)** 7417 South Hawes Road. Located at the northeast corner of Hawes Road and Germann Road (55± acres). Rezone from AG to M-1 BIZ and O-S and Site Plan Review. This request will allow for the development of a movie production studio. Gateway Airport Partnership/Germann and Hawes Limited Partnership/Vince Stark, owner; Nathan Cottrell – EST, Inc., applicant.

P&Z Recommendation: Approval with conditions. (Vote: 6-0, Boardmember Perkinson absent)

- 6d. Repealing Title 5, Chapter 12 of the Mesa City Code related to massage establishments and adopting a new Title 5, Chapter 12 that strengthens oversight of massage establishments.

Mayor Smith explained that the action to be taken by the Council at this meeting is only the introduction of the ordinance and that final action would be taken by the Council in two weeks.

Richard Youngblood stated that although he supports most of the proposal, he expressed concern that the requirement for a manager to be present at all times during business hours places an unfair burden on the establishment. He said that this would require two managers in order to provide coverage during breaks and lunch hours. Mr. Youngblood noted that although the proposed ordinance states that an I-94 form with a photograph is an acceptable form of identification, he advised that the I-94 form does not include a photograph. He suggested that a "permanent resident card" that includes a photograph would be an acceptable form of identification. Mr. Youngblood also requested clarification regarding the definition of "premises" in regard to the prohibition of a liquor establishment on the premises of a massage business. He added that if the definition of "premises" includes the complex, he would like information as to how the requirement impacts businesses already located in that type of an area.

Deborah Dickinson said that at a recent meeting of massage establishment owners, City representatives stated that another meeting would be held when the draft ordinance was available. She noted that a second meeting has not been held, and she was concerned that the business owners are being excluded from the process.

City Manager Christopher Brady stated that another meeting would be scheduled prior to Council consideration of the ordinance.

Mayor Smith assured Ms. Dickinson that the Council would not take action unless the affected parties have had an opportunity to review the ordinance.

Councilmember Richins suggested that the Council move forward with the introduction at this meeting and, if the subsequent meeting with the massage establishment owners results in significant changes, the ordinance could be reintroduced at a later date.

Mr. Brady stated that staff would schedule the meeting with the massage establishment owners prior to the next Council meeting. He noted that the City was attempting to craft an ordinance that would be consistent with ordinances adopted by other Valley communities.

Ms. Dickinson stated that as a sole proprietor who operates on a referral basis only, she objects to the requirement for permanent signage. She suggested that the Police Department maintain photographs of the legitimate massage therapists rather than posting their pictures on the wall of the establishment.

Councilmember Kavanaugh noted that the Council has been working with the Police Department on this issue for more than a year and that the goal is to duplicate the regulations of other Valley communities in order to provide a level of consistency.

Mayor Smith noted that unfortunately the reputable business owners suffer the consequences of the disreputable operators. He added that if the ordinance requires substantial changes, the revised ordinance will be reintroduced.

It was moved by Councilmember Richins, seconded by Councilmember Kavanaugh, that the subject ordinance be introduced and that November 16, 2009, be established as the date of the public hearing.

Mayor Smith responded to comments by Vice Mayor Jones by noting that there was a motion on the floor to introduce the ordinance.

City Attorney Debbie Spinner advised that the motion could be withdrawn by the maker or the Council could vote in support of or in opposition to the introduction of the ordinance. She added that a vote in opposition to the introduction should include Council's direction to staff regarding future action.

Councilmember Richins stated the opinion that the proposed ordinance addresses the issues, and therefore he would not withdraw his motion. He suggested that minor changes could be made in the future as necessary.

Mayor Smith said he would vote in support of the introduction, and he added that an additional meeting with the massage establishment operators could generate changes that may require a reintroduction of the ordinance.

Mayor Smith called for the vote.

Upon tabulation of votes, it showed:

AYES –	Finter-Higgins-Jones-Kavanaugh-Richins-Smith
NAYS –	None
ABSENT –	Somers

Mayor Smith declared the motion carried unanimously by those present.

7. Items from citizens present.

There were no items from citizens present.

9. Adjournment.

Without objection, the meeting adjourned at 6:56 p.m.

ATTEST:

SCOTT SMITH, MAYOR

LINDA CROCKER, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Council Meeting of the City Council of Mesa, Arizona, held on the 2nd day of November 2009. I further certify that the meeting was duly called and held and that a quorum was present.

LINDA CROCKER, CITY CLERK

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Attachments (2)